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Viewing cable 07MANAGUA2116, NICARAGUA: GOVERNMENT RETURNS EXXON FUEL DEPOT

If you are new to these pages, please read an introduction on the [structure of a cable](#) as well as how to [discuss them](#) with others. See also the [FAQs](#)

Understanding cables

Every cable message consists of three parts:

- The top box shows each cables unique reference number, when and by whom it originally was sent, and what its initial classification was.
- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
- The bottom box presents the body of the cable. The opening can contain a more specific subject, references to other cables ([browse by origin](#) to find them) or additional comment. This is followed by the main contents of the cable: a summary, a collection of specific topics and a comment section.

To understand the justification used for the classification of each cable, please use this [WikiSource](#) article as reference.

Discussing cables

If you find meaningful or important information in a cable, please link directly to its unique reference number. Linking to a specific paragraph in the body of a cable is also possible by copying the appropriate link (to be found at the paragraph symbol). Please mark messages for social networking services like Twitter with the hash tags **#cablegate** and a hash containing the reference ID e.g. **#07MANAGUA2116**.

Reference ID	Created	Released	Classification	Origin
07MANAGUA2116	2007-09-14 01:14	2011-08-30 01:44	CONFIDENTIAL	Embassy Managua

Appears in these articles:

<http://www.nacion.com/2011-05-30/Mundo/NotasSecundarias/Mundo2758456.aspx>
<http://www.nacion.com/2011-05-30/Mundo/NotasSecundarias/Mundo2758467.aspx>
<http://www.nacion.com/2011-05-30/Mundo/NotasSecundarias/Mundo2758468.aspx>
<http://www.nacion.com/2011-05-30/Mundo/NotasSecundarias/Mundo2758464.aspx>
<http://www.confidencial.com.ni/articulo/4103/la-embusa-y-el-gabinete-de-ortega>
<http://www.confidencial.com.ni/articulo/4104/d-rsquo-escoto-en-onu-ldquo-un-desafio-de-ortega-a-ee-uu-rdquo>
<http://www.confidencial.com.ni/articulo/4102/estrada-y-la-ldquo-doble-cara-rdquo-ante-ee-uu>
<http://www.confidencial.com.ni/articulo/3966/la-ldquo-injerencia-rdquo-de-ee-uu-en-el-2006>
<http://www.nacion.com/2011-05-23/Mundo/Relacionados/Mundo2758764.aspx>
<http://www.nacion.com/2011-05-23/Mundo/NotaPrincipal/Mundo2758753.aspx>
<http://www.confidencial.com.ni/articulo/4041/millones-de-dolares-sin-control-y-a-discrecion>
<http://www.confidencial.com.ni/articulo/4040/la-ldquo-injerencia-rdquo-de-venezuela-en-2006>
<http://www.confidencial.com.ni/articulo/4047/rodrigo-barreto-enviado-de-ldquo-vacaciones-rdquo>
<http://www.nacion.com/2011-05-16/Mundo/NotasSecundarias/Mundo2757239.aspx>
<http://www.nacion.com/2011-05-16/Mundo/NotaPrincipal/Mundo2746658.aspx>
<http://www.nacion.com/2011-05-16/Mundo/Relacionados/Mundo2757244.aspx>
<http://www.nacion.com/2011-05-16/Mundo/Relacionados/Mundo2746673.aspx>
<http://www.confidencial.com.ni/articulo/3991/dra-yadira-centeno-desmiente-cable-diplomatico-eeuu>
<http://www.confidencial.com.ni/articulo/3968/pellas-pronostico-a-eeuu-victoria-de-ortega-en-2006>
<http://www.confidencial.com.ni/articulo/3967/barreto-era-ldquo-fuente-confiable-rdquo-para-eeuu>

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TO RUEHC/SECSTATE WASHDC IMMEDIATE 1279
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE
RUEHCV/AMEMBASSY CARACAS 1178
RUCPDO/DEPT OF COMMERCE WASHINGTON DC
RUEATRS/DEPT OF TREASURY WASHINGTON DC
RHEBAAA/DEPT OF ENERGY WASHINGTON DC

C O N F I D E N T I A L MANAGUA 002116

SIPDIS

SENSITIVE
SIPDIS

DEPT FOR EEB/ESC, EEB/BTA, WHA/EPSC, WHA/CEN/TLERSTEN
SAN JOSE FOR CS/JMCCARTHY
DEPT PLEASE PASS TO USTR AND OPIC

E.O. 12958: DECL: 09/12/2017
TAGS: [EINV](#) [EPET](#) [ETRD](#) [NU](#)
SUBJECT: NICARAGUA: GOVERNMENT RETURNS EXXON FUEL DEPOT

REF: A. MANAGUA 2055
[1](#)B. MANAGUA 2016
[1](#)C. MANAGUA 1952

Classified By: Classified By: A/DCM Jerome Oetgen, Reason: E.O. 12958 1
.4 (b) and (d)

[1](#)1. (C) Summary. Exxon representatives informed the Embassy that Esso/Nicaragua's Corinto I fuel depot was returned to Esso/Nicaragua during the afternoon of September 13. This triggered the signing of a memorandum of intent between the government and Esso/Nicaragua, stating Esso's willingness to negotiate the use of Corinto I for the handling of imported Venezuelan gasoline and diesel. Exxon also promises to consider purchasing Venezuelan crude oil for its Managua refinery through Petronic, Nicaragua's state-owned petroleum importing and distribution company. In recent days, the government has reiterated a series of complaints against Esso/Nicaragua for nonpayment of taxes and environmental crimes. None seem valid, but this will likely not stop politicized courts or Ortega-controlled tax institutions from ruling otherwise, should the government want to reassert pressure against Esso in future. End Summary.

[1](#)2. (C) Esso/Nicaragua Country Manager Joaquim de Magalhaes told Econoff that the return of Corinto I fuel depot to Esso took place during the afternoon of September 13. De Magalhaes described the transfer as "uneventful." Judge Socorro Toruno appeared at the site around 1:00 p.m. to deliver the order reassigning control of the plant to Esso/Nicaragua. This triggered the signing of the agreed upon memorandum of intent between the government and Esso/Nicaragua regarding future cooperation in the import of Venezuelan petroleum products.

[1](#)3. (C) In the end, the government agreed to Exxon's demand to return Corinto I and requirements to manage potential safety issues caused by state-owned Petronic modifications to Esso/Nicaragua's storage tanks. Exxon's inspection Corinto I storage tanks is still ongoing at the drafting of this cable. However, De Magalhaes told Econoff that so far there are no surprises; he is still waiting for the final report.

[1](#)4. (C) The memorandum of intent addresses Esso/Nicaragua's willingness to negotiate the use of Corinto I (either through contract, lease, or sale) to receive imported Venezuelan gasoline and diesel. Total capacity of the seven tanks in question is 22,000 barrels. This falls far short of a normal shipment of between 80,000 and 120,000 barrels, but is what

Petronic lacks at the Port Corinto to do the job. Esso's eighth tank in Corinto I holds 30,000 barrels, but actively used. Esso's second facility, Corinto II, handles the balance and the bulk of Esso's storage needs at the Port of Corinto.

¶15. (C) Esso/Nicaragua also promises to consider purchasing Venezuelan crude oil through Petronic for its Managua refinery. The refinery processes around 21,000 barrels per day. we believe that the proceeds of these purchases will be subject to Venezuela's commitments to ALBA, i.e., 25% of the revenues routed to an ALBA development bank and 25% routed to an ALBA fund. We note that the annual oil import bill for Nicaragua is around \$600 million. The Nicaraguan government wants to source at least 50% of this from Venezuela in a form subject to ALBA commitments.

¶16. (C) The government has given no indication that it is backing away from a series of claims against Esso/Nicaragua involving tax evasion and environmental crimes. In fact, the government has recently reiterated these claims. None seem valid, but this fact will likely not stop politicized courts or Ortega-controlled tax institutions from ruling otherwise, should the government want to reassert pressure on Esso in future. The memorandum of intent includes the notion that the government will sit down with Esso to work through these issues.

¶17. (C) Esso/Nicaragua has provided us with the following breakdown of government claims against the company, including charges of environmental crimes and negligence, as of September 7, 2007.

Tax Assessment Arising from a Fiscal Audit of 2003-2006

¶18. (C) Esso/Nicaragua received a request from Nicaraguan tax authorities to conduct a tax assessment during the period 2003-2006. The scope of the assessment, which is still in progress, includes the corporate income tax, value added tax, energy consumption tax, and withholding taxes. The government later expanded the period of the assessment to 1996)2007, despite the fact that there is four-year statute of limitations on tax violations. Esso will cooperate with the government's request for information, but is opposing the expansion of the assessment period.

Customs Duties \$6 Million

¶19. (C) Nicaraguan Customs claims that Esso/Nicaragua's refinery owes \$6 million in unpaid duties related to crude oil imports. Esso opposes the claim because petroleum is exempt by law from import duties. Esso argues that importing the oil in question before filing for a tax exemption amounts to administrative problem requiring an administrative solution. This was the claim that started the attachment order on Corinto I.

Tax Notice Claiming \$6 Million Payment

¶10. (C) The first part of this notice is the government's claim that Esso/Nicaragua failed to pay \$2 million in income tax during the period 2003-2006. To make this claim, the government ignores the 25% tax rate that the government granted to Esso/Nicaragua under the terms of Esso's investment contract. Instead, the government argues that today's 30% tax rate should apply, though it was instituted after the government signed the contract with Esso. Esso argues that its investment contract is still valid under Nicaragua's foreign investment law and that the 25% rate still applies. Esso has letters from tax authorities acknowledging this point.

¶11. (C) The second part of this claim adds \$4 million in unpaid energy consumption taxes (IEC) for the period 1995)2007. Here, the government challenges a credits taken

for value added taxes in IEC returns. Esso/Nicaragua plans to appeal on the grounds that it has obtained government approval to take these credits. Esso argues that the logic of the IEC regime was to incorporate various taxes into a single tax on petroleum products.

Tax Notice Claiming \$40 Million in Unpaid Taxes

¶12. (C) This claim centers upon Esso/Nicaragua's supposed failure to pay \$5 million in withholding taxes during the period 1993-2007. Another \$35 million is assessed on owed interest. Esso claims that it properly paid this tax. Tax authorities are still reviewing Esso's documentation to this effect.

Tax Notice Claiming Unpaid Municipal Taxes of \$5 Million

¶13. (C) In a long standing dispute, municipal authorities charge that Esso/Nicaragua, Shell, Texaco, and Petronic should pay a municipal business license fee assessed as a 2% tax on sales. The companies lost their appeal, but petitioned the Supreme Court, where a final decision is pending. The companies are braced for defeat, but argue that the law states that the sale of petroleum products is exempt from all municipal taxes. Esso's share is \$5 million.

Environmental Crime) Puerto Sandino

¶14. (C) The government has charged two Esso/Nicaragua executives with criminal negligence for the (severe) weather related spill of oil residue during contracted fuel tank cleaning in October 2006. Esso has fully cooperated with authorities in cleaning up the spill and monitoring clean up activities. The area has been thoroughly cleaned and certified by the responsible environmental agency. No major or irreversible damage has occurred. The six months limitation for a speedy trial has lapsed, but since December 2006 the two Esso executives are prevented from departing the country.

Environmental Negligence) Oil Pipeline

¶15. (C) Vandals cut the oil pipeline leading from the Port of Sandino to Esso/Nicaragua's refinery in Managua. Esso promptly notified authorities, filed a police report, and began clean-up of the area. Nonetheless, the Municipality of Managua fined Esso, and the Ministry of the Environment and Natural Resources is initiating an administrative charge against Esso.

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